IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 180 OF 2006

The Sangli Bank Limited.] .. Petitioners

Versus

1. Pawankumar Hiralal Poddar & 5 ors.] .. Respondents

Ms. S. Shinde i/b Consulta Juris for the petitioners.

Mr. H. Toor i/b N.I. Bakali for the respondents No.1 to 5.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.

DATED: 06TH MARCH, 2006

P.C. :

. Learned counsel holding for counsel for the petitioner seeks adjournment. Request rejected.

2. The petitioners have approached this Court against the order passed by the Debt Recovery Appellate Tribunal [DRAT] dated 1st September, 2005 and the order of the Debt Recovery Tribunal [DRT] dated 14th December, 2004.

3. The petitioners had filed proceedings for recovery against the respondents. DRT, by the impugned

order, passed a conditional order insofar as interest is concerned. DRT also ordered interest with quarterly rests from the date of filing of the original application till the end of December, 2004. An Appeal was preferred against the said order which has been dismissed. It is that order which is the subject matter of the present Petition.

4. Though the issue has not been raised herein, considering that the petitioners have invoked our extra ordinary jurisdiction, though we are not interfering with the order, we may mention that it will not be open to the Tribunal to award either interest at quarterly rests or penal interest after the date of final order. This is because in the final adjudication of the amounts due and payable by the debtor there is no question of any instalment becoming due and payable. Quarterly rest arises when the debtor fails to pay the instalment and consequently, the concept of quarterly rests by which the interest is capitalized. Similarly, insofar as penal interest is concerned the concept is, for failure to pay the interest on time. A Tribunal, when it finally ascertains amounts due and payable, also cannot order penal interest as what will be payable would be interest on the amount due and payable in terms of Section 34 of the Civil Procedure Code or corresponding

provision of any special law. These observations are being made as we have noted that in the order of DRT, though it was passed on 14th December 2004, interest with quarterly rests was to be calculated till the end of December, 2004.

5. The only limited question is whether it was open to the Tribunal to have exercised its discretion insofar as granting interest prior to the date of the order. In the instant case, the petitioners have paid interest at quarterly rests. Considering that as there has been exercise of discretion by the Tribunal and as the respondent have paid the amount ordered, we do not think this to be a fit case where we should exercise our extra ordinary jurisdiction. Hence Petition rejected.

6. Needless to say that if the petitioners have paid the amount, respondents are bound to return the Title Deeds in respect of the mortgaged property.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]